

HOUSE BILL 2434
By Ferguson

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 29
and Title 62, relative to home inspection services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 62, Chapter 6, is amended by deleting
Part 3 in its entirety.

SECTION 2. Tennessee Code Annotated, Title 62, is amended by adding Sections 3
through 13 of this act as a new chapter thereto.

SECTION 3. This chapter shall be known and may be cited as the "Tennessee Home
Inspector License Act of 2004".

SECTION 4. As used in this chapter, unless the context otherwise requires:

- (1) "Client" means any person who hires or seeks to hire a home
inspector to obtain a home inspection or home inspection report;
- (2) "Commission" means the Tennessee home inspector commission;
- (3) "Home inspection" means a visual analysis for the purpose of
providing a professional opinion of the condition of a residential building, ancillary
buildings, any reasonably accessible installed components, and the operation of
the building's systems, including any controls normally operated by the owner of
the building, for the following components:
 - (A) Heating systems;
 - (B) Cooling systems;
 - (C) Electrical systems;

- (D) Plumbing systems;
- (E) Structural components;
- (F) Foundations;
- (G) Roof coverings;
- (H) Exterior and interior components; and
- (I) Any other site aspects that affect the residential dwelling.

Home inspection does not include a compliance inspection for building codes or any other codes adopted by this state or a political subdivision of this state.

(4) "Home inspection report" means a legibly written document prepared for compensation and issued after a home inspection. The report shall include the following:

(A) A report on any system or component inspected that, in the opinion of the inspector, is significantly deficient or near the end of the system's or component's service life. A report under this subdivision must include the reason why the system or component is significantly deficient or near the end of the system's or component's service life, unless the reason is self-evident;

(B) The inspector's recommendation to remedy or monitor a deficiency reported under subdivision (A);

(C) A list of any systems or components that were designated for inspection in the standards of practice adopted by the commission but that were not inspected;

(D) The reason a system or component listed under subdivision (C) was not inspected;

(E) A statement that the report does not address environmental hazards, including:

- (i) Lead-based paint;
- (ii) Radon;
- (iii) Asbestos;

- (iv) Cockroaches;
- (v) Rodents;
- (vi) Pesticides;
- (vii) Treated lumber;
- (viii) Mold;
- (ix) Mercury;
- (x) Carbon monoxide; or
- (xi) Other similar environmental hazards;

(F) A statement that the report does not address wood destroying insects and organisms; and

(G) A statement that the report does not address subterranean systems or system components (operational or nonoperational), including:

- (i) Sewage disposal;
- (ii) Water supply; or
- (iii) Fuel storage or delivery.

(5) "Home inspector" means any person who is licensed under this chapter as a home inspector; and

(6) "Residential building" means a structure that is intended to be or is in fact used as a residence consisting of from one (1) to four (4) family dwelling units.

SECTION 5.

(a) There is hereby created the Tennessee home inspector commission, hereinafter referred to as the "commission", which shall administer and enforce the provisions of this chapter.

(b) The commission shall consist of seven (7) members appointed by the governor.

(1) Four (4) members shall each have been principally engaged in performing home inspections in this state for at least five (5) years prior to the

date of such member's appointment. The governor shall strive to appoint at least one (1) member of the American Society of Home Inspectors and one (1) member of the Home Inspectors of Tennessee.

(2) One (1) member shall be a home builder principally engaged in home building in this state for at least five (5) years prior to the date of such member's appointment and shall be a member in good standing of the Home Builders Association of Tennessee.

(3) One (1) member shall be a licensed real estate broker or affiliate broker as defined in § 62-13-102, who has been principally engaged in performing real estate services for at least five (5) years prior to the date of such member's appointment, and is a member in good standing of the Tennessee Association of Realtors.

(4) One (1) member of the commission shall be a public member who is not engaged in the performance of home inspections and who is the owner and resident of a residential building in this state.

(5) The governor shall make initial appointments of two (2) members for a term of one (1) year, two (2) members for a term of two (2) years, and three (3) members for a term of three (3) years. Thereafter, all members shall be appointed for three (3) years. Each home inspector member of the commission appointed after July 1, 2005, must be a state licensed home inspector.

(6) In making appointments to the commission, the governor shall strive to ensure that at least one (1) person serving on the commission is a member of a racial minority.

(c) Any vacancy occurring on the commission shall be filled by the governor for the unexpired term.

(d) No members shall be appointed to succeed themselves for more than one (1) full term.

(e) The governor may remove any member of the commission for misconduct, incompetency, or willful neglect of duty.

SECTION 6.

(a) Upon qualification of the members appointed, and at the first meeting of each calendar year thereafter, the commission shall organize itself by selecting from its members a chair and a vice chair.

(b) In accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, the commission shall promulgate such rules and regulations necessary for carrying out the provisions of this chapter.

(c) The commission shall meet at least quarterly each calendar year, and may hold such additional meetings as it deems necessary for the purpose of transacting its business. All members of the commission shall be duly notified of the time and place of each meeting.

(d) A majority of the members to which the commission is entitled constitutes a quorum at any meeting of the commission.

(e) Any member who fails to attend two (2) consecutive meetings or who fails to attend fifty percent (50%) of all meetings during any calendar year shall be deemed to have resigned from the commission.

(f) Members of the commission shall not be compensated for their services but shall be reimbursed for actual expenses incurred in the performance of their duties, to be paid in accordance with the comprehensive travel regulations promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

SECTION 7. The director of the division of regulatory boards in the department of commerce and insurance, or the director's designee, shall serve as executive director of the commission and shall provide all administrative functions of the board. The division of regulatory boards shall provide the commission with clerical and other staff, including investigators and legal counsel, necessary to the performance of the commission's duties, to the extent that such staff services can be provided by existing division personnel.

SECTION 8. The commission has the power and the duty to:

(1) Administer and enforce the provisions of this chapter;

(2) Issue and renew licenses to home inspectors pursuant to the provisions of this chapter;

(3) Suspend, revoke, or fail to renew the license of a home inspector;

(4) Establish standards for the initial and continuing education of home inspectors, including prescribing the form and content of examinations to determine the qualifications of persons applying for licensure;

(5) Establish rules for acquiring the training and experience requirements for home inspectors;

(6) Adopt and publish a code of ethics and standards of practice for home inspectors; and

(7) Charge and collect fees, including license application and renewal fees, to be utilized to fund such activities as may be necessary to carry out the provisions of this chapter.

SECTION 9. It is unlawful for any person, directly or indirectly, to engage in or conduct, or to advertise or claim to be engaging in or conducting the business, or acting in the capacity of a home inspector as defined in this chapter, within this state, without first obtaining a home inspector license as provided in this chapter.

SECTION 10.

(a) Any person who applies for licensure as a home inspector must submit an application on a form as prescribed by the commission. The application shall be accompanied by the fee specified in Section 8 of this act.

(b) Applicants for licensure shall furnish evidence satisfactory to the commission that the applicant:

(1) Is at least eighteen (18) years of age;

(2) Has graduated from high school or earned a general education development certificate;

(3) Has not been convicted of a crime that has a direct bearing on the applicant's ability to perform competently and fully as a licensee;

(4) Is not the subject of a disciplinary or enforcement action by another state or a local jurisdiction in connection with the performance of home inspections or the licensing or certification of home inspectors;

(5) Has:

(A) Completed one hundred fifty (150) home inspections under the supervision of a licensed home inspector in this state; and

(B) Successfully completed a commission-approved training program or course of study involving the performance of home inspections and the preparation of home inspection reports;

(6) Has passed a commission-approved competency examination administered by the state or an entity selected by the state; and

(7) Has obtained a certificate of insurance in an amount required by the commission for general liability as well as errors and omissions to cover all activities contemplated under this chapter.

(c) During the first one hundred eighty (180) days after January 1, 2005, the commission may issue a license to an applicant who meets the requirements of subsections (a) and (b), excluding subsection (b)(5), if the applicant furnishes evidence satisfactory to the commission that the applicant:

(1) Has been principally engaged in the performance of home inspections in this state for at least two (2) years; and

(2) Has completed at least one hundred fifty (150) home inspections for compensation in the applicant's career.

SECTION 11. If the commission determines that an applicant meets the requirements of this chapter and is qualified for a home inspector license, it shall issue a license to the applicant that shall expire two (2) years following the date of issuance unless revoked or suspended prior thereto. The expiration date of the license shall appear on the license and no other notice of its expiration need be given to its holder. The commission shall maintain a roster, which shall be made available to the public, showing the name and place of business of each home inspector

currently licensed. A licensee shall notify the commission immediately of any change of name, change of name under which the licensee conducts business, or change in business address.

SECTION 12.

(a) To renew a current valid home inspector license, the holder of such license shall submit an application on a form as prescribed by the commission. The application for renewal shall be accompanied by the fee specified in Section 8 of this act. All documentation and fees that are prerequisite to the renewal of a license shall be delivered to the commission not earlier than one hundred twenty (120) days nor later than thirty (30) days prior to the expiration date of the license then held.

(b) Applicants for license renewal shall furnish evidence satisfactory to the commission that the applicant:

(1) Has completed thirty-two (32) hours of commission-approved continuing education;

(2) Has not violated the provisions of this chapter or the rules and regulations of the commission; and

(3) Has obtained a certificate of insurance in an amount required by the commission for general liability as well as errors and omissions to cover all activities contemplated under this chapter.

(c) The commission may refuse to renew any license if the licensee has continued to perform home inspections in this state following the expiration of the license.

SECTION 13.

(a) The rights of any licensed home inspector may be revoked, suspended, or restricted, or the owner of the license may be assessed a civil penalty of up to one thousand dollars (\$1,000) per violation, or otherwise disciplined in accordance with the provisions of this chapter, upon any of the following grounds:

(1) Accepting or offering commissions or allowances, directly or indirectly, from or to parties other than the client, unless fully disclosed to the client in writing;

(2) Performing or offering to perform repair or maintenance work on a property the licensee has inspected in the preceding twelve (12) months;

(3) Using a home inspection to deliberately obtain work in another field or profession;

(4) Accepting compensation, financial or otherwise, from more than one (1) interested party for the same service without the consent of all interested parties;

(5) Failing to disclose to the client any financial interest or any relationship that may affect the client's interest;

(6) Disclosing information concerning the results of a home inspection without the approval of the client or the client's legal representative, except under a court order;

(7) Knowingly making a false or misleading representation about:

(A) The condition of a residential dwelling for which the licensee has performed or has contracted to perform a home inspection; or

(B) The extent of the services the licensee has performed or will perform;

(8) Committing a felony in the course of the practice of home inspection;

(9) Violating any provisions of this chapter or rules promulgated by the commission under this chapter;

(10) Making a false or misleading representation:

(A) In a license or renewal application form; or

(B) In information provided to the commission;

(11) Failing to pay any fees or fines required by this chapter;

(12) Failing to continuously maintain the insurance required by this chapter;

(13) Communicating to the public false or misleading information about the type of license held by the licensee;

(14) Engaging in a course of lewd or immoral conduct in connection with the delivery of services to clients; or

(15) Failing to complete the continuing education requirements established by the commission.

(b) The executive director of the commission, acting on behalf of the commission, is authorized to issue citations against persons engaging in or conducting business, or acting in the capacity of a home inspector as defined in this chapter without a license in violation of Section 9 of this act. The commission shall promulgate rules and regulations to specify those conditions necessary to the issuance of a citation, and the range of penalties for violations of this chapter. Each citation shall:

(1) Be in writing and shall describe with particularity the basis for the citation; and

(2) Contain an order to cease all violations of this chapter and an assessment of a civil penalty in an amount not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000) per violation.

(c) The sanctions authorized pursuant to this chapter shall be in addition to any other remedies, civil and criminal, available to any person harmed by a violation of this chapter.

SECTION 14. Tennessee Code Annotated, Section 4-29-227(a), is amended by adding a new item thereto, as follows:

() Home inspector commission, created by Section 5 of this act;

SECTION 15. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 16. For the purpose of promulgating rules and regulations and for appointing members of the commission, this act shall take effect upon becoming a law, the public welfare

requiring it. For all other purposes, this act shall take effect January 1, 2005, the public welfare requiring it.